

To: Tina Laidlaw/MO/R8/USEPA/US@EPA[]
From: "Suplee, Mike"
Sent: Thur 8/30/2012 3:23:04 PM
Subject: RE: NSTEPS review and a few additional comments on the rule language

Hi Tina;

Got the peer reviews and the language recommendations to the rule package. I think the edits for NEW RULE I (2) would be OK; I assume that EPA just wants it clear that the section pertains to the factors found at 40 CFR 131 (10)(g), right?

The addition to the definition of limits of tech should also be OK, but let me mull of that a bit more.

By the way, I think we may have a problem with the rule language you guys suggested (and that we added) in NEW RULE I (7) about "If the Department does not meet the statutory requirements at 75-5-313...blah blah. Going forward we are planning to include a non-severability clause which essentially says that the nutrient criteria and the variance process stay together as a rule package or they fall (in other words, we can't have the criteria on the books without the variance process too). EPA's language noted above would likely be in conflict with this, and may need to be struck out going forward.

Mike

From: Tina Laidlaw [mailto:Laidlaw.Tina@epamail.epa.gov]
Sent: Wednesday, August 29, 2012 2:21 PM
To: Suplee, Mike
Subject: NSTEPS review and a few additional comments on the rule language

Mike,

Attached are the NSTEPs reviewer comments on Montana's technical supporting document, "Scientific and Technical Basis of the Numeric Nutrient Criteria for Montana's Wadeable Streams and Rivers". Once you've had an opportunity to review the comments, let's plan to get together and talk.

(See attached file: MT Nut crit review_20120807 #3.pdf)(See attached file: MT Nut crit review_20120807

#1.pdf)(See attached file: MT Nut crit review_20120807 #2.pdf)

Below are a few additional comments on the rule language (see the red text below). Please let me know if you have any questions on these suggested revisions. At this point, I don't have any edits for you on downstream use language. I'm hoping to talk to HQs about this topic later this week and will let you know after that conversation if we have any suggested edits.

Tina

Edits to New Rule 1

(2) An application for an individual variance must provide adequate demonstration that there are no reasonable alternatives that eliminate the need for a variance and that attainment of the base numeric nutrient standards is precluded due to economic impacts, the limits of technology, or both pursuant to the applicable federal requirements at 40 C.F.R. Part 131. If the demonstration relies upon economic impacts, the demonstration must be consistent with the guidelines developed by the department and the nutrient work group, as provided in 75-5-313(2), MCA.

(16) "Limits of technology" means wastewater treatment processes for the removal of nitrogen and phosphorus compounds from wastewater that can consistently achieve a concentration of 70 micrograms of total phosphorus per liter and 4,000 micrograms of total nitrogen per liter. These numbers represent presumptive values that would be re-evaluated for any variance related to limits of technology.*

* edits should also be incorporated into DEQ Circular 12

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